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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,801	12/15/2000	William J. Beyda	00 P 9081 US	2375
7590 01/28/2009				
Siemens Corporation Attn: Elsa Keller, Legal Administrator Intellectual Property Department 186 Wood Avenue South Iselin, NJ 08830			EXAMINER SHELEHEDA, JAMES R	
			ART UNIT	PAPER NUMBER
			2424	
			MAIL DATE	DELIVERY MODE
			01/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/738,801	Applicant(s) BEYDA, WILLIAM J.
Examiner JAMES SHELEHEDA	Art Unit 2424

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/James Sheleheda/
Examiner, Art Unit 2424

Continuation of 11, does NOT place the application in condition for allowance because: On page 7 applicant argues that Budge does not teach the recited "deactivate signal" as the Mail button is pressed to send a recorded message and thus there is nothing to deactivate as the message has already been recorded.

In response, it is noted that claim 1 only recites a "deactivate signal". The claim does not require any particular type of deactivation signal nor does it provide any requirement as to what must be "deactivated". Budge discloses where the user will press the Mail button to initiate the mail application to create and send the video email (See Figs. 6 and 7; column 6, lines 16-29). Thus, the virtual VCR system for recording messages is "deactivated" to initiate the video email system and prompts to transmit the email. This meets the current claim limitations as the "deactivate" signal is not required to be a "stop recording" signal, as applicant suggests. The only particular functionality tied to the "deactivate" signal is that it initiates the email application.

Further, it is noted that only claim 1 recites a "deactivate signal". Thus, applicant's arguments are only pertinent to claims 1-3, and not claims 4-7 and 9-22 as applicant suggests.

On page 8, applicant argues that in Liwerant, no automatic accessing occurs in response to the end of clip message or video email signal.

In response, as indicated above, it is noted that none of the claim require an "end of clip message". Budge discloses the required signal as shown above.

Regarding the "video email signal", it is noted that Liwerant explicitly discloses this feature. Liwerant discloses a "share as a video email button". Initiation of this button will activate the email application and automatically attach the video clip to the email (see Fig. 9, paragraph 117-118).

On page 8, applicant argues that in Liwerant the video file is never transmitted in an email. In response, it has been repeatedly shown that Liwerant explicitly disclose transmitting the video within the email. Liwerant discloses transmitting an email that includes a video player PRELOADED with the video (paragraph 118). This is disclosed as being alternative to following a URL to download the video clip from the server (paragraph 118). Therefore, applicant's arguments are not convincing. The statement that Liwerant does not email the video clip is completely incorrect as Liwerant explicitly discloses the emailing of the video.

In response to applicants arguments on pages 8-10, it is once again noted that Liwerant does in fact disclose transmitting an email with the video clip attached. An email is transmitted with the video player with the video preloaded (paragraph 118). This is provided as an alternative to connecting to a URL. Thus, applicant's arguments concerning Liwerant are not persuasive.